IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 652 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DASHRATHSINH SAMPATSINH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 652 of 2002

MR RAJESH M AGRAWAL for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 27/03/2002

ORAL JUDGEMENT

#. Rule. Learned APP Mr.R.C.Kodekar for the State waives service of Rule.

#. Ordinarily, this court does not interfere with the order passed by the learned Sessions Judge rejecting the bail application of the accused, who is charged for the offence under provisions of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act"). In the instant case, P.I., Shri N.P.Jadeja is present before the court with relevant papers of the case.

#. Learned counsel Shri Agrawal for the petitioner-accused raised several contentions in the matter and urged this court to release the accused on bail till the final disposal of the trial. According to his submission, the petitioner-accused is a young boy of hardly 19 years old at the time of commission of offence. The allegation against him is that 450 gms. of opium was recovered from him but under the notification dated 19.10.2001 issued under the NDPS Act, his case would fall under the newly amended Act whereby he can be punished up to 10 years. After submitting all the contentions on merits Mr.Agrawal had submitted that stringent conditions be imposed in the matter while releasing the accused on bail. He also submitted that, in addition to usual terms and conditions imposed by the court, while releasing the accused on bail the accused may be directed to deposit reasonable amount of Rs.25,000/= in cash before the trial court and the same may be forfeited if the accused absconds after being enlarged on bail.

#. Learned APP Shri Kodekar vehemently objected grant of bail. According to him bail should not be granted to the accused who is involved in a serious offence under NDPS Act. However, he submitted that on peculiar facts and circumstances of this case, if the court is inclined to release the accused on bail, then without assigning any reasons the accused be released on bail with the condition that the petitioner-accused be directed to first deposit Rs.25,000/= in cash before the Trial Court, which may be forfeited if the accused is absconded after being enlarged on bail.

#. It appears that the apprehension of the learned APP Shri Kodekar seems to be that if in this case the accused is released on bail, then this order may be cited as precedent before this court as well as other courts by other accused for getting bail. In my considered opinion, the apprehension of learned APP Mr.Kodekar is not well-founded. Releasing the accused on terms and conditions, without assigning any reason can never become a precedent which is binding to this court or any other courts. As stated earlier, ordinarily this court does not grant bail to the accused person, who is charged with

the offences under provisions of NDPS Act, but having regard to the peculiar facts and circumstances of the case, I am of the considered opinion that the present applicant-accused is required to be released on bail and accordingly he is ordered to be released on bail in connection with the CR No. II 62/01 registered with Chotila Police Station on his executing bond of Rs.25,000/= two sureties of like amount to the satisfaction of the Lower Court and subject to the following conditions :-

(a) He shall deposit Rs.25,000/= in cash before the Lower Court, which may be forfeited to the State if he is absconded after being enlarged on bail.

(b) He shall not to take undue advantage of his liberty or abuse his liberty.

(c) He shall not act in a manner injurious to the interest of the prosecution.

(d) He shall maintain law and order.

(e) He shall mark his presence before Chotila Police Station on every Sunday between 9.00 a.m. to 2.00 p.m.

(f) He shall not leave the local limits of Districts Surendranagar and Ahmedabad without the prior permission of the Sessions Judge at Surendranagar.

(g) He shall furnish the address of his residence at the time of execution of the bond and shall not change the residence without prior permission of this court.

(h) He shall surrender his passport, if any, to the lower court within a week.

(i) If breach of any of the above conditions is committed, the Sessions Judge at Surendranagar will be free to issue warrant or take appropriate action in the matter.

(j) Bail before the Lower Court having jurisdiction to try the case.

Rule is made absolute. Direct service is permitted.

(B.J.Shethna, J.)

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